


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
OCT 19 2006

CLERK

GENERAL CASUALTY COMPANY OF)
WISCONSIN, a foreign corporation,)

Plaintiff,)

vs.)

CARDIOLOGY ASSOCIATES, PC, a)
South Dakota corporation, dba The Heart)
Doctors; ALEX SCHABAUER, M.D.;)
and CARL WARREN ADAMS, M.D.,)

Defendants.)

Civ. 06- 4200

COMPLAINT FOR
DECLARATORY RELIEF

For its cause of action against Defendants, Plaintiff ("General Casualty") states and alleges as follows:

1.

General Casualty is a stock insurer organized as a corporation under the laws of Wisconsin, with its principal office in Sun Prairie, Wisconsin and is a citizen of the State of Wisconsin.

2.

Defendant Cardiology Associates, PC (the "Heart Doctors") is a South Dakota medical corporation with its principal place of business in Rapid City, South Dakota and is a citizen of the State of South Dakota.

3.

Defendant Alex Schabauer, M.D. (“Schabauer”) is a resident of South Dakota and a citizen of the State of South Dakota.

4.

Defendant Carl Warren Adams, M.D. (“Adams”) resides in Durango, Colorado and is a citizen of the State of Colorado.

5.

The citizenship of General Casualty is diverse from the citizenship of each defendant; and the amount in controversy herein, exclusive of interest and costs, exceeds \$75,000.

6.

This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1332.

7.

General Casualty has issued to The Heart Doctors as the named insured (i) a Commercial Marketplace Policy No. CCS 0362938 and (ii) a Commercial Umbrella Liability Policy No. CCU 0362938 for various policy periods, including the period extending from October 22, 2002 to October 22, 2003 (together the “Policies”). True copies of the two Policies are together attached hereto as Exhibit A.

8.

Defendant Adams has commenced a civil action in this Court, Civ. 04-5067-RHB, against The Heart Doctors and Defendant Schabauer (the “Adams Litigation”) by Summons and Complaint, filed as Document Nos. 1 and 2 therein, of which this Court may take judicial notice.

9.

Upon tender of defense by Heart Doctors and Schabauer, General Casualty issued a reservation of rights and denial letters dated August 30, 2004, together attached hereto as Exhibit B.

10.

Pursuant to Exhibit B, General Casualty has been providing a defense to Defendants Heart Doctors and Schabauer in the Adams Litigation.

11.

In the course of the Adams Litigation, the Court has now entered its judgment dated August 23, 2006 (Document No. 120) dismissing with prejudice all counts against The Heart Doctors and Defendant Schabauer except a cause of action for intentional interference with business relations or expectancy, of which this Court may take judicial notice.

12.

Following entry of the judgment in the Adams Litigation, General Casualty has issued its supplemental reservation of rights and denial letters, true copies of which are together attached hereto as Exhibit C.

13.

For reasons described in Exhibits B and C, and now that the Court has entered its judgment, it is clear that the Policies do not afford any coverage to Defendants Heart Doctors and Schabauer for any claim that is still pending in the Adams Litigation; and General Casualty has no duty to defend said Defendants in the Adams Litigation solely for the claims that have not been dismissed.

14.

The circumstances above-described present a genuine controversy resolvable by this Court's declaratory judgment pursuant to FRCP 57, 28 U.S.C. § 2201 et seq., and other applicable law.

WHEREFORE, General Casualty prays for judgment against Defendants as follows:

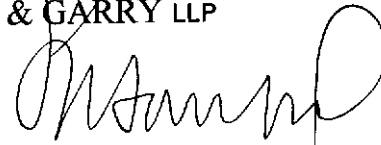
1. Declaring that (i) the Policies afford Defendants Heart Doctors and Schabauer no indemnity coverage for the remaining claims pending in the Adams Litigation and (ii) General Casualty owes those defendants no duty to defend the Adams Litigation if the only pending claims are those that have not been dismissed;
2. For General Casualty's costs and disbursements herein; and

3. For such other and further relief as the Court deems appropriate in the circumstances.

Dated: October 19, 2006

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& GARRY LLP

By



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